

1982 S.C. Op. Atty. Gen. 35 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-30, 1982 WL 155000

Office of the Attorney General

State of South Carolina

Opinion No. 82-30

May 5, 1982

**\*1 SUBJECT: Taxation—Sales, Manufacturer's Rebate.**

A manufacturer's rebate to the retail customer does not effect the gross proceeds of sale or the sales price for purposes of sales or use taxes.

To: Honorable Caldwell Thomas Hinson  
House of Representatives  
Lancaster County, District No. 46

**QUESTION:**

Whether a rebate offered by an automobile manufacturer to retail customers will reduce the gross proceeds of sale of purposes of sales tax or reduce sales price for use tax considerations?

**STATUTES:**

South Carolina Code of Laws (1976), §§ 12-35-30, 12-35-120, 12-35-510 and 12-35-810.

**DISCUSSION:**

This office by way of letter dated October 27, 1971, copy which has been attached, stated that a rebate from the manufacturer to the retail customer did not effect the gross proceeds of sale which are determined by the amount proceeding or accruing to the retail vendor. Nor, did such rebate effect the sales price of the property purchased. Although the factual situation at hand is different from the one discussed in our letter of October 27, 1971, it is felt the results of the transaction therein would be identical with the case at hand.

Since the writing of the subject letter, there have been judicial decisions that support the conclusions previously reached. They will be further discussed below.

Section 12-35-510 imposes the sales tax on the gross proceeds of sales as defined at § 12-35-30 which reads in part:

'The term 'gross proceeds of sales' means the value proceeding or accruing from the sale of tangible personal property \* \*  
\*; provided, that:

(1) Cash discounts allowed and taken on sales shall not be included; \* \* \*.'

Under the statute, it is presumed that all gross receipts of a taxpayer are subject to the sales tax until the contrary is established, that is, the Supreme Court of South Carolina has consistently adhered to the rule that exemptions in taxing statutes are to be strictly construed against the exemption and in favor of the tax rather than to be entitled to a liberal interpretation so as to result in an exemption. See [M. B. Kahn Const. Co. v. Crain](#), 222 S.C. 17, 71 S.E. 2d 503 (1952); 1963-1964 OAG No. 1645, p. 79.

Section 12-35-510 imposes the tax upon the 'selling at retail' with the tax measured by the seller's 'gross proceeds'. Thus, where gross proceeds are not reduced the full amount thereof is subject to the tax. However, § 12-35-30 exempts from gross proceeds 'cash discounts allowed and taken on sales'. Arguably where a discount is allowed the purchaser by the seller, the amount of the discount is not subject to the tax since it is never received by the seller. Here, though, the rebate is paid by a third party, an automobile manufacturer.

There is nothing in the sales tax statutes or regulations permitting a seller to deduct from his gross proceeds an amount paid by a third party to or for the benefit of a purchaser, even though the purpose of the payment is to reimburse the purchaser for a part of the purchase price. The gross proceeds accruing to the seller remain the same whether or not a rebate is paid by a third party. See [Keystone Chevrolet Company v. Kirk](#) (1978), 69 Ill. 2d 483, 372 N.E. 2d 651.

\*2 Furthermore, the sales tax imposed by § 12-35-510 is a vendor tax. Thus, it is the retailer who is taxed, not the purchaser and the purchaser is the one for whose benefit the rebate is paid. While the manufacturer's rebate is offered as an inducement to a purchaser to buy a car, it neither changes the character of the transaction between seller and purchaser nor effects the liability of the retailer to pay a tax computed on the basis of the amount received by him, here gross proceeds of sale. See [Keystone Chevrolet Company v. Kirk](#), supra.

Sales and use taxes were designed as an integral whole, [Sullivan v. United States](#), 395 U.S. 169, 23 L.Ed. 2d 182, 89 S.Ct. 1648, and are thus, construed in *pari materia*, [Douglas Aircraft Co. v. Johnson](#), 13 Cal. 2d 545, 90 P. 2d 572. Therefore, since the factory rebate could not be considered as a cash discount for sales tax purposes, it likewise would not be considered as a cash discount for purposes of reducing 'sales price', the measure of use taxes imposed at § 12-35-810.

#### CONCLUSION:

A manufacturer's rebate to the retail customer does not effect the gross proceeds of sale or the sales price for purposes of sales or use taxes.

Harry T. Cooper, Jr.  
Assistant Attorney General

#### ATTACHMENT

P. O. Box 125

October 27, 1971

Mr. James A. ??, Director

Sales and/or Use Tax Division

South Carolina Tax Commission

Columbia, South Carolina

Dear Mr. Walton:

This is in reply to your letter of October ??, 1971 in which you request an opinion of this office.

President Nixon has recommended that the Federal manufacturers' excise tax on automobiles be repealed retroactively effective August 15, 1971. In the event that this proposal is adopted, certain manufacturers have announced that they will rebate the

amount of the excise tax directly to the retail customers. You have asked whether this rebate will entitle the retail customer to a sales tax or a use tax refund.

Section 65–1401 of the South Carolina Code provides for the imposition of a sales tax upon the gross proceeds of sales of persons engaged in the business of selling at retail. The term ?? proceeds of sales is defined in Section 65–1353 of the Code to be the value proceeding or accruing from a sale. There is an ?? of excluded items, but no provision which would exclude a manufacturer's rebate to a retail customer. A rebate from the manufacturer to the retail customer does not affect the gross proceeds of the sale which are determined by the amount proceeding or accruing to the retail vendor.

Section 65–1421 of the Code provides for the imposition of a use tax based on the sales price of the property purchased. Section 65–1362 defines sales price to mean the total amount for which tangible personal property is sold. A rebate from the manufacturer to the retail customer does not affect the sales price of the property purchased.

It is, therefore, the opinion of this office that under the facts stated ??, no refund of sales tax or of use tax should be made.

Yours very truly.

\*3 John C. von Lehe  
Assistant Attorney General  
SOUTH CAROLINA TAX COMMISSION

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